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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/398,156	09/16/1999	R. ERIC MONTGOMERY	1910/174	9712

7590

08/07/2003

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EXAMINER

LEVY, NEIL S

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 08/07/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

# BEST AVAILABLE COPY

## Office Action Summary

Application No.

09 398156

Applicant(s)

MONTGOMERY

Examiner

MBE Cony

Group Art Unit

166

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—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

### Status

- ☒ Responsive to communication(s) filed on 5/9/03
- ☒ This action is FINAL
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

### Disposition of Claims

- ☒ Claim(s) 1, 3-6, 8, 10-13, 14-21 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1, 3-6, 8, 10-12, 14-21 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

### Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119 ~~(a)(1)~~ e

- ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119 ~~(a)(1)~~ e
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

### Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

Office Action Summary

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 4, 6, 8, 11, 14, 16, 18, 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Boyer-5700651.

The rejection of record is maintained.

Applicant's arguments filed 5/9/03 have been fully considered but they are not persuasive. Applicants argues Boyer only shows bromochlorophene, which is not cationic. However, we note applicants' claim 4 lists Alexidine, chlorhexidine salts as cationic antimicrobials. If they are cationic, so are the antimicrobials of Boyer, including bromchlorophene. Applicant further argues Boyer is not necessarily charged, and does not require charge attraction to the carrier. However, applicants' claims do not require charge attraction, either. Applicant then goes to an explanation of how in the process of rising the claimed device, the eating habits of a dog result in the activity. Applicant argues Boyer does not show. However, Boyer addresses articles for the same use by the same dog, and the claimed compositions are the same, the dog is the same, and the behavior is the same.

Claims 1, 3-6, 8, 10-12, 14-21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Applicants assertions and claims are inconsistent with applicants arguments-the claimed compounds are not cationic compounds. (see

registry printout) so it is not now evident how one maintains and obtains the compounds and the carrier in cationic and negatively charged form respectively.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

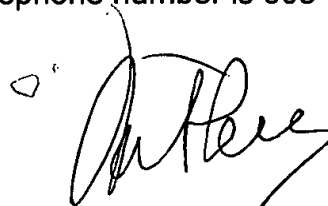
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 308-2412. The examiner can normally be reached on Tuesday- Friday 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on 308-2927. The fax phone numbers for the organization where this application or proceeding is assigned are 308-4556 for regular communications and 872-9307 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1235.

A handwritten signature in black ink, appearing to read "Neil S. Levy". The signature is stylized with a large initial "N" and a long, sweeping horizontal stroke at the end.

Levy/tgd  
July 29, 2003

**NEIL S. LEVY**  
**PRIMARY EXAMINER**